The Commonwealth of Massachusetts

Decision mailed: 10/30/09
Civil Service Commission
CS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

LAWRENCE D. BURGO,
Appellant

v.

CITY OF TAUNTON,
Respondent

Case No.: D-08-86

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 22, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 19, 2009. No comments were received by the Commission from either party.

The Commission finds that there is no jurisdiction to hear the appeal. The Appellant seeks redress of a verbal discipline, written discipline and a reclassification of his position. The Commission has no jurisdiction to hear the verbal and written discipline pursuant to c. 31 § 41. Also, even if the Appellant's request for reclassification were properly before the Commission, there would be no jurisdiction because he is not a state employee as required under c. 30 §49.

The Appointing Authority's Motion to Dismiss is allowed, the Appellant's appeal is hereby *dismissed* due to lack of jurisdiction.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 29, 2009.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after

receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Anthony D. Pini (for Appellant)
Jane E. Estey, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals
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August 19, 2009

Christopher Bowman
Chairman
Civil Service Commission
1 Ashburton Place, Rm. 503
Boston, MA 02108

Anthony D. Pini
Mass Laborers District Council
7 Laborers Way
Hopkinton, MA 01748-2684

Jane E. Estey, Esq.
Assistant City Solicitor
City of Taunton Law Department
15 Summer St.
Taunton, MA 02780

Re: Lawrence Burgo v. City of Taunton, Docket No. CS-08-413

Dear Chairman Bowman, Mr. Pini and Attorney Estey:

Enclosed is a copy of the Recommended Decision in the above-entitled appeal that is being issued today.

The parties are advised that pursuant to 801 CMR 1.01(11) c), they have thirty (30) days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs. If either party files written objections to the recommended decision, the opposing party may file a response to the objections within twenty (20) days of receipt of a copy of the objections.

Very truly yours,

Mark L. Silverstein
Administrative Magistrate

mls
Enc.

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Suffolk, ss.

Docket No. CS-08-413

LAWRENCE D. BURGO, Appellant

v.

CITY OF TAUNTON, Appointing Authority

RECOMMENDED DECISION

Appearance for the Appellant:

Anthony D. Pini, Mass Laborers District Council, 7 Laborers Way, Hopkinton, MA 01748-2684

Appearance for the Appointing Authority:

Jane E. Estey, Esq., Assistant City Solicitor, City of Taunton Law Department, 15 Summer St., Taunton, MA 02780

Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

Petitioner, a working foreman employed by a municipal publics works department, suffered no discharge, removal, suspension, transfer, layoff, reduction of rank or pay, reclassification or other action that he could appeal pursuant to M.G.L. c. 31, § 42 as a result of verbal and written warnings from his supervisor, and no relief relative to the warnings, or to his claims regarding work out-of-grade, reclassification to a higher position and retroactive pay at the higher compensation rate paid to a Senior Foreman, is available to him under M.G.L. c. 31, § 43. Accordingly, the petitioner's appeal challenging the reprimands is dismissed for lack of jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to 801 CMR 1.01(7)(g)(3).

Introduction

In this M.G.L. c. 31 civil service appeal, appellant Lawrence D. Burgo, a working foreman employed by the City of Taunton Department of Public Works (DPW), challenges verbal and written reprimands issued to him by the DPW Assistant Commissioner on February 11 and 12, 2008 regarding work that Mr. Burgo asserts to be that of a senior foreman, and therefore "out of classification," without compensation at the higher per-hour rate at which Taunton DPW senior foremen are paid. Asserting that Mr. Burgo suffered no discharge, removal, suspension, transfer, layoff, reduction of rank or pay, reclassification or other action that he could appeal under M.G.L. c. 31, § 42, Taunton moved to dismiss his appeal for lack of standing and failure to state a claim upon which relief could be granted. Mr. Burgo opposed the motion.

I conclude that Mr. Burgo has suffered no harm to his employment status as a Working Foreman and therefore cannot pursue his claims under M.G.L. c. 31, § 42. Accordingly, I issue a recommended decision granting Taunton's motion and dismissing Mr. Burgo's appeal for lack of jurisdiction.

Dismissal: Applicable Standard

An appeal may be dismissed for lack of jurisdiction or for failure to state a claim upon which relief can be granted if it appears beyond doubt that the appealing party is entitled to no relief on his claim even if his factual allegations (but not his legal conclusions) are taken as true and he is given the benefit of all inferences. *See* 801 CMR 1.01(7)(g)3.

I apply this standard in deciding Taunton's motion to dismiss. Determining the motion begins, therefore, with the facts asserted by Mr. Burgo whose truth I assume in deciding the motion, and the facts comprising this appeal's undisputed procedural history.

Facts Assumed to be True in Determining Motion to Dismiss

1. Mr. Burgo has been employed by the Taunton DPW as a Working Foreman, Grade MEO III—a civil service position—in the DPW's sewer and drain division since March 1989. (Motion hearing argument; *see also* Appellant Burgo's Opposition to Motion to Dismiss filed with Civil Service Commission, dated May 12, 2008 ("Burgo Opp."), at 1, and Exh. 1: Taunton DPW Sewer Division notice of hourly rate for "Jr. Working Foreman and Operator" and City of Taunton Civil Service Form for Position of Working Foreman/MEO GIII dated March 27, 1989.)

2. Mr. Burgo is a member of Public Employees Local Union 1144 of the Laborers' International Union of North America, AFL-CIO. The Massachusetts Laborers' District Council, on behalf of the Public Employees Union Local 1144A of the Laborers' International Union of North America, AFL-CIO (collectively, "the union") and the City of Taunton entered into a collective bargaining agreement covering wages, hours and conditions of employment at the Taunton DPW (and at other Taunton municipal departments) that was in effect for the period July 1, 2006-June 30, 2008. Taunton and the union are currently negotiating a new contract or contract extension. (Motion hearing argument; see also copy of collective bargaining agreement attached as Exh. 3 to Taunton's post-hearing memorandum.)

3. On November 26, 2007, Taunton DPW Assistant Commissioner Anthony Abreau ordered Mr. Burgo to direct and supervise street patching crews. (Burgo Opp., at 1.)

4. Because Mr. Burgo considered the supervision of DPW crews to be working in a higher classification—as a Senior Foreman rather than as a Working Foreman—he asked Assistant Commissioner Abreau on November 26, 2007 whether he would receive "economic relief" as part of this assignment, and Mr. Abreau told him that "he was working on it" and "that something would be done." (Burgo Opp., at 1.)

5. On February 11, 2008, Mr. Burgo told Assistant Commissioner Abreau that he did

not want to perform the work of a Senior Foreman unless he was going to be promoted or was compensated at the higher rate at which a Taunton DPW Senior Foreman was paid, including back pay to November 26, 2007 equal to the difference between what he was paid at the Working Foreman's rate of compensation and what a Senior Foreman would have been paid. Mr. Abreau ordered Mr. Burgo to continue the work he was ordered to perform on November 26, 2007. (Motion hearing argument; Burgo Opp., at 1.)

Undisputed Facts

6. Also on February 11, 2008, Assistant Commissioner Abreau issued a verbal warning to Mr. Burgo, memorialized in writing on the same day, after Mr. Burgo declined to perform paperwork, including filling out daily activity sheets, because this was not part of his job and was, instead, work performed by a Senior Foreman. The verbal warning was confirmed in writing on the same day, and a written warning to Mr. Burgo from Assistant Commissioner Abreau concerning the failure to fill out the daily activity sheets followed on February 12, 2008 (Burgo opp., at 1, and at Exhs. 2, 3.)

7. Mr. Burgo filed a grievance under the collective bargaining agreement on February 11, 2008 in which he alleged unjust cause for the warning issued to him on the same day. (Burgo Opp., at 1 and at Exh. 6.)

8. Assistant Commissioner Abreau denied the grievance on February 12, 2008. (Burgo Opp., at Exh. 6.) Mr. Burgo moved the grievance to the next step on February 14, 2008 by filing it with the Taunton DPW's Human Resources Department, which denied the grievance on February 29, 2008 on the ground that it was a management's core right to hand down work assignments. (*Id.*)

9. On April 4, 2008 Mr. Burgo filed a "Discipline Appeal Form" with the Civil Service Commission. (Burgo Opp.; Exh. 7.) The form offered two types of appeals: "Appeal of Just Cause

Determination," which Mr. Burgo did not select, and "Appeal of Procedure in Determining Just Cause," which he selected. (*Id.*). Under this latter subheading, the form furnished the following preprinted language:

> "Pursuant to the provisions of M.G.L. c. 31, s. 42, I hereby allege that my appointing authority has failed to follow the requirements of M.G.L. c. 31, s. 41 that has affected my employment or compensation."

Following the phrase "Specifically, the appointing authority did not:...", the form provided several choices specifying what the appointing authority did not do (for example, "hold a timely hearing") and, as well, "other," next to which Mr. Burgo wrote: "Doing work out of classification." (*Id.*)

10. In his appeal to the Civil Service Commission, Mr. Burgo sought both the removal of the verbal and written warnings from his file and his appointment as Senior Foreman retroactive to November 26, 2007, with back pay to that date. (Motion hearing argument; Burgo Opp., at 1-2.)

11. The Civil Service Commission held a prehearing conference in Mr. Burgo's appeal on May 5, 2008. On the same day, Taunton moved to dismiss the appeal for lack of jurisdiction under M.G.L. c. 31, § 42, contending that even though Mr. Burgo had filed a discipline appeal form, he had not identified a disciplinary decision from which he was appealing and, in addition, no disciplinary action was pending against Mr. Burgo, and no request by him for reclassification had been denied. Mr. Burgo filed opposing papers on May 12, 2008, in which he asserted that he had been disciplined and "written up" unjustly, had not been paid at the higher rate to which he was entitled for work out of grade, and had no other remedy other than to appeal under the statute. The Civil Service Commission gave Mr. Burgo an opportunity to file additional information regarding his claim and the relief he sought. Taunton renewed its motion to dismiss subsequently, on May 30, 2008, asserting that Mr. Burgo had furnished no additional information demonstrating that his appeal was brought properly under M.G.L. c. 31, § 42 and, in particular, that Mr. Burgo remained a Working Foreman, had not been assigned to be Senior Foreman, and had filed no request for reclassification.

12. The Civil Service Commission transferred the appeal, together with the pending motions to dismiss, to the Division of Administrative Law Appeals. I heard oral argument on the motions on June 25, 2008. Taunton and Mr. Burgo each filed, with leave, a post-hearing memorandum, and Taunton also filed proposed findings of fact and conclusions of law, to which were attached various exhibits including the collective bargaining agreement between Taunton and the union representing Mr. Burgo.

Discussion

1.

The civil service statute, M.G.L. c. 31, provides in pertinent part that:

> Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished.

M.G.L. c. 31, § 41.

The statute defines "discharge" as "the permanent, involuntary separation of a person from his civil service employment by his appointing authority," M.G.L. c. 31, § 1, and "suspension" as "a temporary, involuntary separation of a person from his civil service employment by the appointing authority." *Id.* The operative action common to "discharge" and "suspension" is separation from civil service employment. The statute does not define "removal" or "transfer," leaving these words to be defined per their usual and ordinary meaning, and in the employment context both words also denote a separation from an employment position.

M.G.L. c. 31, § 42 provides that "[a]ny person who alleges that an appointing authority has failed to follow the requirements" of section 41 of the statute "in taking action which has affected

his employment or compensation" may file a complaint with the Civil Service Commission.[1] An appealing party who prevails in an appeal under M.G.L. c. 31, § 42 can be "returned to his position without loss of compensation or other rights," M.G.L. c. 31, § 43. second para., a remedy that may include the recovery of back pay. *See, e.g., White v. City of Boston*, 57 Mass. App. Ct. 356, 783 N.E.2d 467 (2003), *rev. denied*, 439 Mass. 1103, 786 N.E.2d 395 (2003).

The remedies made available by M.G.L. c. 31, § 43 suggest, thus, that an appeal under M.G.L. c. 31, § 42 must challenge a civil service employee's actual separation from his position, such as by dismissal or demotion, in order to seek available relief. That is indeed the case. What M.G.L. c. 31, § 42 makes appealable—an appointing authority's "[a]ction which has affected...employment or compensation"—is one or more of the actions specified at M.G.L. c. 31, § 41, first sentence, such as the actual discharge, removal or suspension of a tenured employee by the appointing authority, and as a consequence nothing less comes within the purview of this phrase, including an expressed intention to terminate employment or to carry out, at a later date, any of the acts specified by M.G.l. c. 31, § 41. *See Director of Civil Service Agency and Office of Emergency Preparedness v. Civil Service Commission*, 373 Mass. 401, 367 N.E.2d 1158, 1173 (1977);[2] *see also*

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[1]/ The civil service law defines "appointing authority" as "any person, board or commission with power to appoint or employ personnel in civil service positions." M.G.L. c. 31, §1. In this case, the Taunton DPW is the appointing authority.

[2]/ At issue in *Director of Civil Service* was the timeliness of employees' complaints to the Civil Service Commission regarding their termination which, under the former M.G.L. c. 31, § 46A, had to be filed by an employee within seven days of "action of the appointing authority in failing to follow the requirements of section forty-three" that "affected" his employment or compensation (the current time limitation is ten days, per M.G.L. c. 31, § 43). In determining the date from which the complaint had to be filed, however, the Court was required to determine whether the earlier notice of intent to terminate employment at a future date, or the termination itself at a later date, was the action that "affected... employment" under M.G.L. c. 31, § 43 and started the complaint clock running.

The director of the Civil Defense Agency and Office of Emergency Preparedness had notified the employees on February 28, 1975 that their employment would terminate on March 28, 1975 via a reduction in force made necessary by economic recession. The employees were indeed terminated on that date. On March 31, 1975, the employees filed complaints with the Civil Service Commission alleging that the director had failed to hold a hearing on the basis for their termination (as required by former M.G.L. c. 31, § 43A—and now, by M.G.L. c. 31, § 41) and seeking reinstatement with back pay.

Choiniere v. City of Worcester, Docket No. D-06-172, Decision, 21 MCSR 129, 131 (Mass. Civ. Serv. Comm'n, Mar. 13, 2008)(the reassignment of a permanent part-time intermittent cafeteria helper, who was not guaranteed any set number of hours or permanent location under the applicable collective bargaining agreement, to work a shorter three hour day was not a change in the type of work she performed, or of her job title, hourly rate of compensation or civil service tenure; accordingly, the reassignment was not an action that the employee could appeal as violative of M.G.L. c. 31, § 41, and her appeal challenging the reassignment was dismissed for lack of jurisdiction).

To sum up: a civil service employee who sustains one or more of the actions specified at section 41 is aggrieved and may appeal to the Civil Service Commission under M.G.L. c. 31, § 42; an employee who sustains no such disciplinary action has no jurisdictionally-viable claim to pursue under section 42, however..

2.

a.

Even with the truth of his factual assertions assumed and the benefits of all inferences from

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The director countered that (among other things) the employees' complaints were untimely because they were not filed within seven days after the February 28, 1975 notice of termination.

The Supreme Judicial Court concluded that the operative action from which the seven-day time to file a complaint was computed was the date on which the employees were terminated (March 28, 1975), and that the complaints were therefore timely filed on March 31, 1975. The Court reasoned thus:

> "[T]he words "employment or compensation has been affected by action of the appointing authority" refer, not to the appointing authority's expression of an intention to terminate employment at a future date, but to the actual termination of employment and cutting off of pay. Until that time it is not known that the procedures required by s 43(a) have been denied, and of course even the intention to terminate may be abandoned. The crucial date, then, was March 28, 1975, and the employees' complaints were filed within the seven days.

367 N.E. 2d at 1173.

these assumed facts given to him, Mr. Burgo alleges no disciplinary action that may be appealed under M.G.L. c. 31, § 42.

Without question Mr. Burgo was issued both a verbal and a written warning by his Taunton DPW supervisor, Mr. Abreau, and I assume it to be true that Mr. Abreau also directed him to continue directing and supervising street patching crews, as he first directed him to do on November 26, 2007. However, neither the warnings nor the directive to continue the work in question separated Mr. Burgo from his civil service employment as a Working Foreman. They did not, thus, discharge, remove, suspend or transfer Mr. Burgo from his employment,[3] and nor did the warnings or directive lower him in rank or compensation from that of a Working Foreman. Any of those actions would have made Mr. Burgo an aggrieved person with standing to appeal under M.G.L. c. 31, § 42. In contrast, neither the warnings nor the directive comprised "action which has affected his employment or compensation" that Mr. Burgo could challenge by way of an M.G.L. c. 31, § 42 appeal.

Mr. Burgo's challenge to the warnings he received on February 11 and 12, 2008 is also jurisdictionally defective because it states no claim upon which relief can be granted. Mr. Burgo pursues relief other than return to a position from which he was separated with back pay—relief he could not seek here, at any rate, because he was not terminated or demoted from his position as a Working Foreman. As to the warnings, therefore, Mr. Burgo does not seek a remedy that M.G.L. c. 31, § 43 makes available even if his factual allegations are taken as true and he is given the benefit of all inferences that these assumed facts generate.

b.

Mr. Burgo's out-of-grade pay claim also seeks no relief that he can obtain in this appeal. He

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[3]/ Whether or not directing and supervising street patching crews was the work of a Senior Foreman rather than the work of a Working Foreman, Mr. Burgo was not separated from his position as Working Foreman, and he continues to hold that position.

seeks the higher rate of compensation, with back pay retroactive to November 26, 2007, for what he alleges to be the work of a Senior Foreman that he has performed since that date. The allegation that directing and supervising street patching crews, and performing paperwork including filling out daily activity sheets, is the work of a Senior Foreman rather than a Working Foreman is a conclusion, rather than a fact, and accordingly I do not assume its truth in deciding Taunton's motion to dismiss. That point notwithstanding, what Mr. Burgo seeks is not redress for action causing him a loss of pay, such as a demotion, but, rather, a reclassification to the Senior Foreman position at a higher rate of compensation retroactive to November 26, 2007.

The route to this relief, if it is available, is not by way of an M.G.L. c. 31, § 42 appeal. If Mr. Burgo's position were not covered by a collective bargaining agreement, the route to this relief would be, first, by way of a classification appeal pursuant to M.G.L. c. 30, §49 before the Human Resources Division's Personnel Director,[4] and, if this proved to be unsuccessful, the next step under the same statute would be an appeal to the Civil Service Commission.[5] M.G.L. c. 30, § 49 states, however, that its provisions do not apply to "any employee whose position is included in a collective bargaining unit represented by an employee organization certified" pursuant to M.G.L. c. 150E, § 4. Under its collective bargaining agreement with Taunton, the Massachusetts Laborers' District Council, on behalf of the Public Employees Union Local 1144 of the Laborers' International Union

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[4]/ M.G.L. c. 30, § 49 allows a manager or employee of the Commonwealth to appeal "any provision of the classification affecting his office or position...in writing to the personnel administrator," meaning to the Commonwealth's Human Resources Division. *See also McAuliffe v. Human Resources Division*, Docket No. G2-07-127, Decision on Respondent's Motion to Dismiss, 21 MCSR 241 (Mass. Civ. Serv. Comm'n, June 13, 2008) (because appellant did not first file an appeal with the Human Resources Division challenging his current classification as a "Tax Auditor II" with the state Department of Revenue (DOR), he lacked standing to challenge the Personnel Administrator's failure to act upon his request that the Human Resources Division update the classification specifications for DOR tax auditors, and the Commission therefore dismissed the appeal for lack of jurisdiction under M.G.L. c. 30, § 49).

[5]/ It is unclear that there was a classification decision to appeal under this statute even if the appeal route it provides were available here. Assuming for argument's sake that Mr. Burgo's conversations with his supervisor on November 26, 2007 and February 11, 2008 (*see* above, at 3, Findings 3 and 4) were requests for reclassification as a Senior Foreman, there is no evidence in the record that the requests were denied.

of North America, AFL-CIO, is designated as the exclusive bargaining representative of non-managerial Taunton DPW employees (including Mr. Burgo) with respect to wages, hours and other conditions of employment. (Taunton Post-Hearing Memorandum (July 31, 2008), at Exh. 3: collective bargaining agreement, Art. I, § 1.) The appeal procedure prescribed by M.G.L. c. 30, § 49 does not apply, therefore, to classification-related disputes arising out of Mr. Burgo's employment at the Taunton DPW.[6]

Conclusion and Recommendation

Mr. Burgo suffered no discharge, removal, suspension, transfer, layoff, reduction of rank or pay, reclassification or other action that he could appeal pursuant to M.G.L. c. 31, § 42 as a result of the verbal and written warnings that were issued to him by his Taunton DPW supervisor on February 11 and 12, 2008. No relief relative to the warnings, or to his claims regarding work out-of-grade, reclassification to a higher position and retroactive pay at the higher compensation rate paid to a Senior Foreman, is available to him under the statute.

Accordingly, I issue this recommended decision granting Taunton's motion to dismiss and

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[6]/ The collective bargaining agreement makes available a grievance procedure for resolving disputes concerning wages, hours and working conditions and, if that proves unsatisfactory, a procedure for referring such disputes to binding arbitration (Taunton Post-Hearing Memorandum (July 31, 2008); Exh. 3: collective bargaining agreement, Art. XXII, §§ 1-5). Taunton argues that Mr. Burgo's potential remedies are by way of the procedures specified in the collective bargaining agreement. (Id.; Post-Hearing Memorandum at 5-6) *citing, inter alia*, *Stockman v. Civil Service Commission*, 57 Mass. App. Ct. 1115, 786 N.E.2d 1 (2003) (Division of Medical Assistance employees lacked standing to challenge, before the Civil Service Commission, salary classification upgrades made by the agency pursuant to its agreement with the employees' union that paid them at or above the new salary grade levels but gave them no salary increases, because they suffered no harm to their employment status and because their union's collective bargaining agreement with the agency afforded them a means of resolving grievances).

In view of the appeal's other, and determinative, jurisdictional defects, it is unnecessary for me to go further and determine the status of Mr. Burgo's rights and remedies under the collective bargaining agreement. This restraint is prudent as well in view of collective bargaining agreement-related negotiations between the union and Taunton that were in progress when I heard oral argument on the motion to dismiss.

dismissing Mr. Burgo's appeal for lack of jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to 801 CMR 1.01(7)(g)(3).

Notice

This is a recommended decision of the Administrative Magistrate. It has been transmitted to the Civil Service Commission for the issuance of a decision in this matter.

The parties are advised that pursuant to 801 CMR 1.01(11) c), they have thirty (30) days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs. If either party files written objections to the recommended decision, the opposing party may file a response to the objections within twenty (20) days of receipt of a copy of the objections.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: August 19, 2009